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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/575,161	05/23/2000	Paul Lapstun	NPX016US	9177

24011 7590 06/16/2004

SILVERBROOK RESEARCH PTY LTD  
393 DARLING STREET  
BALMAIN, 2041  
AUSTRALIA

EXAMINER

ABDULSELAM, ABBAS I

ART UNIT	PAPER NUMBER
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2674

16

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/575,161

Applicant(s)

LAPSTUN ET AL

Examiner

Abbas I Abdulsalam

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-55,57-111 and 113-131 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,10-22,24,53-55,57-59,64-76,78,109-111,113 and 118-128 is/are rejected.
- 7) ☒ Claim(s) 6-9,23,25-52,60-63,77,79-108,114-117 and 129-131 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments see # 15 filed 04/05/04, with respect to the rejection(s) of claim(s) 1-3, 5-55, 57-111 and 113-131 under U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of application No. 10291545.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 5, 10-22, 24, 53-55, 57-59, 64-76, 78, 109-111, 113 and 118-128 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1, 2, 3, 5, 13-19, 21-26, 27, 30, 31, 33-34, 42-48, 50-56 of copending Application No. 10291545. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

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Claim 1 of the present application is met by claim 1 of the copending application. It would have been obvious that “a sensing device: containing identifying data indicative of the identity of the user” as used the present application is patently indistinctive from and correspond to “a memory containing identifying data indicative of an identity of a user” as used in the copending application.

Claim 2 of the present application is met by claim 2 of the copending application. Claim 2 of the present application is broader than claim 2 of the copending application, and hence it would have been obvious that removing some of the functions of a “processor” used in the copending application, would make the two claims correspond with each other.

Claim 53 of the present application is met by claim 28 of the copending application. It would have been obvious that “a sensing device: containing identifying data indicative of the identity of the user” as used the present application is patently indistinctive from and correspond to “a memory containing identifying data indicative of an identity of a user” as used in the copending application.

Claim 54 of the present application is met by claim 29 of the copending application. Claim 54 of the present application is broader than claim 29 of the copending application, and hence it would have been obvious that removing some of the functions of a “processor” used in the copending application, would make the two claims correspond with each other.

Claim 109 of the present application is met by claim 1 of the copending application. It would have been obvious that “a sensing device: containing identifying data indicative of the identity of the user” as used the present application is patently indistinctive from and correspond

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to “a memory containing identifying data indicative of an identity of a user” as used in the copending application.

Claim 110 of the present application is met by claim 2 of the copending application.

Claim 110 of the present application is broader than claim 2 of the copending application, and hence it would have been obvious that removing some of the functions of a “processor” used in the copending application, would make the two claims correspond with each other.

Claim 3 of the present application is met by claim 3 of the copending application.

Claim 5 of the present application is met by claim 5 of the copending application.

Claims 10-16 of the present application are met by claims 13-19 of the copending application respectively.

Claims 17-22 of the present application are met by claims 21-26 of the copending application. Respectively.

Claim 24 of the present application is met by claim 27 of the copending application.

Claim 55 of the present application is met by claim 30 of the copending application.

Claim 57 of the present application is met by claim 31 of the copending application

Claims 58-59 of the present application are met by claims 33-34 of the copending application.

Claims 64-70 of the present application are met by claims 42-48 of the copending application.

Claims 71-76 of the present application are met by claims 50-55 of the copending application.

Claim 78 of the present application is met by claim 56 of the copending application.

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Claim 111 of the present application is met by claim 3 of the copending application.

Claim 113 of the present application is met by claim 5 of the copending application.

Claims 118-124 of the present application are met by claims 13-19 of the copending application respectively.

Claims 125-128 of the present application are met by claims 21-24 of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Allowable Subject Matter***

3. Claims 6-9, 23, 25-52, 60-63, 77, 79-108, 114-117 and 129-131 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Any inquiry concerning this communication or earlier communication from the examiner should be directed to **Abbas Abduselam** whose telephone number is **(703) 305-8591**. The examiner can normally be reached on Monday through Friday (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Richard Hjerpe**, can be reached at **(703) 305-4709**.

**Any response to this action should be mailed to:**

Commissioner of patents and Trademarks

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Washington, D.C. 20231

or faxed to:

**(703) 872-9314**

Hand delivered responses should be brought to Crystal Park II, Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology center 2600 customer Service office whose telephone number is (703) 306-0377.

Abbas Abdulsalam

Examiner

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June 11, 2004

  
**XIAO WU**  
**PRIMARY EXAMINER**